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9-11-2009

Attorney for Debtor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEVADA**

* * * * *

IN RE:

ANDREW KENT BADER

Case. No. 09-51641-gwz
(Chapter 13)

MOTION FOR ORDER
VALUING COLLATERAL
(IN SUPPORT OF CONFIRMATION OF
DEBTOR'S CHAPTER 13 PLAN)

Debtor.

Hearing Date: 10/30/2009

Hearing Time: 1:30 pm

Time Required: 1 minute

Comes now the debtor, by and through their Attorney, Alison J. Colvin, Esq. and files this Motion for Order Valuing Collateral –the debtor's residence 2584 Las Plumas Drive in Sparks, Nevada. This Motion is brought pursuant to the Points and Authorities, included herein, prior pleading filed with this court and on further oral argument of counsel as may be presented at the time of the hearing.

POINTS AND AUTHORITIES

I. FACTS

This case was filed on or about, 2009. The plan was filed on the same date. The case was filed to allow the debtor to reorganize his unsecured debt, and “strip” the second mortgages off the property. A confirmation hearing was held on August 14, 2009 and the plan was confirmed on The plan was confirmed on

The debtor is the owner of a piece of residential real property located at 2584 Las Plumas Drive in Sparks, Nevada. The debtor valued the property at \$256,000. See Schedule “A” filed with the petition attached hereto as Exhibit “D”.

Mr. Bader has an appraisal showing the property to be worth \$245,000. Attached hereto as Exhibit “A” is an appraisal of this property. The appraisal has a declaration from Richard Lace incorporated herein by reference.

According to its proof of claim, the holder of the first deed of trust is owed approximately \$394,740.84. A copy of the first page of the claim 5-1 is attached hereto as Exhibit “B” and incorporated herein by reference. This is \$149,740.84 more than the value of the property. The second deed of trust is owed \$95,725.29. See proof of claim of 4-1 attached hereto as Exhibit “C” and incorporated by reference.

II. LEGAL ARGUMENT

The bankruptcy code divides claims into secured and unsecured claims. 11 U.S.C. §506 (a). The debtor is requesting the court value their residence. As such, this motion is brought pursuant to 11 U.S.C. 506 (a) and Fed.R.Bankr.P. 3012.

1 Not every claim that is secured by a lien on property will be considered a "secured
2 claim". SEE In re Zimmer, 313 F.3d 1220, 1223 (9th. Cir. 2002).

3 As stated above, the property is worth \$245,000. The holder of the first deed of trust is
4 owed approximately \$394,740.84. Because there is no equity for the second deed of trust to
5 attach, this lien is fully unsecured. Thus, these entities should lose the creditors status should
6 be as an unsecured claim. .
7

8 Thus, Mr. Bader requests the following:

- 9 1. That this court enter an order valuing the Debtor's Real property at \$245,000.
10 2. That the proof of claim filed by BAC Home Loan Servicing, L.P. fka
11 Countrywide Home Loans Servicing, L.P. for the second deed of trust shall be
12 deemed an allowed general unsecured claim.
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14 RESPECTFULLY SUBMITTED this 11 day of September, 2009.
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16 /s/ Alison J. Colvin, Esq.
17 ALISON J. COLVIN, ESQ.
18 Attorney for Debtor
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